IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1503 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT EDUCATION SOCIETY - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
MS. ARCHANA RAVAL, AGP. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 05/04/2007

ORAL JUDGMENT

1 Rule. Learned Assistant Government Pleader is directed to waive service of Rule. With consent of the learned Advocates appearing for the respective parties the matter is taken up for final hearing.

2 This petition has been filed challenging order dated 29.8.2006 (Annexure “A”) and order dated 2.1.2007 (Annexure “H) made by the respondent authority. The petitioner is running various educational institutions including Secondary and Higher Secondary School. It appears that vide order dated 29.8.2006 various surplus teachers were directed to be absorbed. The dispute in the present relates to one Shri Champaklal K. Chaudhari who is having educational qualification of B.A. B.Ed. The said teacher has been directed by respondent No.3 authority to be absorbed in the Higher Secondary section. The petitioner objected to the same and did not permit the said teacher to join the school. Hence, vide order dated 2.1.2007 (Annexure-H) respondent No.3 made an order of reducing the grant for academic year 2006-2007 by applying 5% cut from the total grant available to the school.

3. The basic case of the petitioner is that the petitioner is ready and willing to absorb a surplus teacher who is otherwise qualified for the post which has fallen vacant and would have no objection if the authority allots a teacher who is suitable to undertake imparting of education in the subject for which the vacancy exists. That the vacancy in the Higher Secondary Section relates to the post of a teacher for English language. As per norms only a person who has successfully completed a course in Post graduation can be

appointed as a teacher in the Higher Secondary section. That Shri Champaklal Chaudhari, the surplus teacher nominated by respondent No.3 is only a graduate and hence is not qualified to be a teacher in the Higher Secondary section.

4. On behalf of the respondent authority reliance has been placed on Government Resolution No. EDS-9175-16205-B dated 28.10.1995 with special reference to paragraph No. 5(a) of the resolution. It is submitted that a teacher who is otherwise qualified to be a teacher in the Secondary Division can also be appointed as a teacher for the Higher Secondary Division provided the concerned teacher has experience for requisite number of years. That Shri Champaklal Chaudhari, the teacher who was nominated by respondent No.3, had already been a teacher in the Secondary Division with the petitioner school, before he was declared surplus and hence, the petitioner cannot refuse to absorb the said teacher.

5. The controversy between the parties lies in a very narrow compass. The petitioner does not dispute in principle that the respondent authority is entitled to allot a surplus teacher for a vacant post. The grievance of the petitioner is only to the extent of the person being unqualified for the job for which vacancy exists. The fact that Shri Champaklal Chaudhari is only a graduate is not disputed. In the circumstances, the respondent authority cannot insist that the said gentleman should be accepted and absorbed by the petitioner school for the vacant post regardless of the qualification of the said gentleman. The resolution on which reliance has been placed by the respondent authority merely

stipulates that in the first instance only the teachers having Master Degree in respective subject shall be appointed to run a class of Higher Secondary Division. However, in a school which is already having a Secondary Division and has surplus teachers who have experience of at least seven years of teaching in the concerned subject in Standards 10th & 11th shall be eligible to teach in the Higher Secondary Division by selection. Therefore, the resolution itself gives an indication that it is applicable only in relation to surplus teachers of the own school i.e. the same school, and that too is circumscribed by the period of experience and more particularly the process of selection. In other words, whether the concerned teacher is proficient to take class in Higher Secondary Division in the concerned subject is not only based on the qualification but also selection. In the circumstances, the respondent authority cannot justify its action on the basis of the said resolution dated 28.10.1975.

6. This Court has already rendered its opinion in the case of *Shree Vidhya Vikas Mandal Vs. State of Gujarat & Ors. 2007(1) GLR 479* as to the modality that may be followed for allotment and absorption of surplus teachers. The respondent authority is directed to act in accordance with the principles and directions laid down in the said judgment. As can be seen from the record vide communication dated 4.9.2006 the petitioner had specifically stated that the petitioner is ready and willing to absorb surplus teacher who is otherwise qualified to teach the concerned subject in the Higher Secondary Division.

7. Hence, the impugned orders dated 29.8.2006 and 2.1.2007

are hereby quashed and set aside. The petitioner having already expressed its willingness to absorb surplus teacher who is otherwise qualified for the vacancy that exists, it will be open to the respondent authority to act in accordance with the directions and the principles laid down by this Court in the aforesaid judgment.

8. The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt